IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

CRL.A.No. 204 of 1999()

CC.13/1998 of ENQUIRY COMMR. & SPL. JUDGE, TRIVANDRUM
.....

APPELLANT: ACCUSED

S.NUJUMUDEEN, S/O.SHAHUL HAMMED,
SUB – ENGINEER, ELECTICAL MAJOR SECTION,
VENJARAMMOODU.

BY ADV. SRI.B.RAMAN PILLAI
SRI.GEORGE PHILIP
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN
SRI.DELVIN JACOB MATHEWS

RESPONDENTS / COMPLAINANT

STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. P.SUKUMARAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON 12.09.2007 DELIVERED THE FOLLOWING:

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CRL.A. NO.204/1999

ORD ON CRL.MP. NO.910/1999 IN CRL.A 204/1999

DISMISSED

12.09.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.A.NO. 204 OF 1999

DATED THIS THE 12th September 2007

JUDGMENT

The appellant, then a Sub Engineer at the Electrical Major Section, Venjaramoodu stands convicted for the offences under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for a further period of six months for the offence under Section 13(2) read with Section 13(1)(d) of the P.C. Act. No separate sentence was awarded for the offence under Section 7 of the Act. The appellant has sought for setting aside the order of the court below alleging that the same is vitiated by inaccuracies and illegalities.

2. The prosecution case is that the accused, Sub Engineer, a public servant demanded a sum of Rs.400/- as illegal gratification for processing the application of the de facto

complainant for electric connection under the OYEC scheme and received the above amount at the trap laid by the Vigilance and Anti Corruption Bureau.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 7, Exts.P1 to P12 and Mos.1 to 4. Defence got examined DW1.

4. The contention of the counsel for the appellant is mainly based on the fact that PW1, the de facto complaint did not fully support the prosecution and that he denied that the accused accepted the bribe when the same was given to him but pushed away with his left hand when the amount was placed in his right hand while he was engaged in writing something and that he (de facto complainant) has placed the currency notes in the ledger found on the table of the accused. The Special Judge declined to believe the words of PW1, the de facto complainant, as it appeared that he has testified so just to save the accused. The trial court also relied on the version of PW2, the decoy independent witness to the seizure mahazar and PW6, the detecting/investigating officer who arranged the trap.

5. The accused when questioned under Section 313 Cr.P.C. has stated as per the version of PW1 as to the events that took place at the trap. But he has denied that he ever demanded bribe. DW1, the Superintendent at the Electrical Major Section, Venjaramoodu, i.e. the same office of the accused has only stated that he heard the cry for help from the accused and when he got up and looked into the room he saw two persons holding the hands of the accused and when he rushed to help him they informed that they are the Vigilance personnel. It is the case of the accused that immediately after he pushed away the currency notes placed in his right hand PW1 placed the same in the ledger and gave a signal touching the head and instantly the Vigilance personnel rushed into the room and caught hold both of his hands.

6. PW1 has testified in detail as to the incident that preceded the trap that he was an applicant in the OYEC scheme and that he obtained Ext.P1(a) application by hand from the office of before the Assistant Engineer, Kanyakulangara and brought the same to the office of the Assistant Executive

Engineer, Venjaramoodu as the sanction of the Assistant Executive Engineer is required. He had applied on 21-2-1997 itself. As the process was not completed, he obtained the same by hand and brought into the office of the Assistant Executive Engineer. It was on 10-3-1997 that he obtained Ext.P1(a) from the Kanyakulangara office and handed over the same to the accused. The accused asked him to come on the next day . On the 11th when he met the accused, the accused informed him that the matter involved some expenditure and that around Rs.400/- will have to be paid to the Assistant Executive Engineer and the accused demanded the money. PW1 told him that he was not having the amount with him and the accused directed him to come on the next day. PW1 then informed the matter to the DY.S.P.Vigilance, (PW6) on the next day. The Dy.S.P. directed him to come to his office on the next day, i.e. on 13th at about 8 a.m. On 13-3-1997 the Dy.S.P. got his complaint recorded and got affixed his signature which he has identified as Ext.P2. He also handed over 4 Nos. of 100 rupee notes to the Dy.S.P. At the time there were two Gazetted officers also along

with the Dy.S.P. He has identified MO.1 series currency notes handed over by him to the Dy.S.P. In the presence of himself and the above Gazetted officers, the Dy.S.P. smeared phenolphthalein powder in the currency notes and explained the procedure. As directed by the Dy.S.P.he along with Dy.S.P. (PW6) and the above Gazetted officers went to the office of the accused. The Dy.S.P. had directed him to relay the signal of touching the head after handing over the money to the accused. PW1 has then deposed that when the amount was placed in the right hand of the accused, he pushed it away with the left hand. He has also stated that the accused has demanded the amount and he went to him to give the amount. According to him, he placed the cash in a register found on the table of the accused, went out and relayed the signal. He has denied the portion of Section 161 statement put to him that he told the accused that he has brought the amount and gave the amount to the accused who received the same with his right hand and counted the same and placed the amount in a register. To a repeated question, he has stated that he did not remember whether he has stated so.

7. PW2, the then Senior Superintendent at the Handloom Textile Directorate who is the independent witness arranged by PW6 has testified in the same words as PW1 as to the steps preceding the trap. He has identified the signature in Ext.P3 entrustment mahazar prepared by the Dy.S.P. prior to the trap. He has identified MO.1 series of currency notes. He has also testified that about 12.45 p.m. he saw the signal displayed by PW1. Then himself, CW2, another Gazetted officer who was along with them as an independent witness and PW6, the Dy.S.P. entered the office of the accused and the Dy.S.P. introduced himself and PW2 and CW2 and then asked the accused as to where he has kept the amount received from PW1. The accused then told that the amount is kept in the ledger indicating the ledger found on the table top of the accused. He has identified the ledger as Ext.P4. Thereafter, he has testified as to the lime water test conducted at the spot. He has stated that the water turned pink when the hands of the accused were dipped in the water whereas the hands of PW2 and the other witness and that of the Dy.S.P.when dipped in another glass of lime water, there

was no difference in colour to the water. He has also identified Mos.2 and 3, the sealed lime water bottle in which the hands of the accused and that of the witnesses and Dy.S.P. were dipped which were taken into custody as per Ext.P5 mahazar, to which he is an attestor. He has also stated that when the tip of the notes were dipped in the lime water, the water turned pink. The water when sprinkled in the register and the ledger, also the water turned pink. MO.4 is the bottle wherein the water in which the tip of the notes were dipped. He has identified Ext.P5 mahazar prepared in the spot.

8. PW6, the detecting officer has also testified in terms of the prosecution case with respect to the information provided by PW1, recording of the same, arranging the trap and the witnesses, preparation of entrustment mahazar and as to the execution of the trap. The version of PW6 is fully supported by that of PW2, the independent witness as to the recovery and as to the reaction of the accused when PW6, the Dy.S.P., PW2 and CW2, the independent witnesses, and the Vigilance Police entered the room of the accused and asked him about the place where

the amount is kept. It is the uniform version of Pws.2 and 6 that the accused replied that the amount is kept in the ledger on his table and he pointed out the ledger. It is the version of PW6 and PW2 that there was not any protest from the accused or that he mentioned anything about the present version that the currency notes were thrust on his hands and that he pushed it away and that PW1 put it in the ledger . Moreover it has to be noted that the evidence of PW6 and PW2 is that the office of the accused is located in the first floor of the building and that PW6 and PW2 and others were stationed near the building and that PW2 came outside of the room of the accused and displayed the signal. It was then PW6 and Pw2 and others entered the room of the accused. It would have taken some time for PW6, PW2 and others to reach the room of the accused. It is pertinent to note that the normal reaction of such a person would have been to raise a commotion to see that PW1, the de facto complainant is made to take away the currency notes. The fact that he just kept quite betrays the falsity of the case set up, as noted by the court below. It is evident from the testimony of DW1, who is sitting in

the same room along with the accused but across one or two racks placed in between, that he heard as stated by him the plea for help only after the vigilance officials allegedly caught hold of the hands of the accused. It was in the above circumstances, the court below found that Section 20 of the Prevention of Corruption Act is attracted. Just because the de facto complainant turned hostile as to the trap portion of the incident the same is no reason to discard the prosecution version. It has to be noted that even PW1 has testified as to the events that preceded the actual execution of the trap as per the prosecution version.

9. The version of PW3, the Assistant Executive Engineer is that Ext.P1(a) application of the de facto complainant was not forwarded to him by the accused. Although even according to the accused, he had completed the formalities on 10-3-1997 itself. The above is a circumstance that would indicate that he retained Ext.P1(a) with him. PW3 has further stated that had he received the application he would have initialled and put the date immediately. The above part of the evidence would

indicate that the version of the accused that he had forwarded the application to PW3 is false. The evidence of the detecting officer if trustworthy can be relied on without corroboration has been reiterated by the Supreme Court in a number of decisions in **Hazari Lal v. State (Delhi Admn.),A.I.R. 1980 S.C.873; State of A.P. v. B. Iswariah, A.I.R. 1983 S.C.353** and **State of U.P. v. Zakaullah, A.I.R. 1998 S.C.1474.** I find that the demand and acceptance of illegal gratification stands proved. The contention that even according to PW1, the demand was for paying the amount to PW3, the Assistant Executive Engineer would not absolve the accused as the corrupt official may demand gratification under various pretexts. The conviction is confirmed.

Counsel for the appellant has pleaded for leniency pointing out that the accused right now is about 60 years age. Evidently the period of superannuation is over. He has got a family consisting of wife and four children. Moreover, more than 10 years have elapsed since the commencement of the proceedings. In the circumstances, I find that sending the accused/appellant to

prison is to be avoided as he would have suffered much during the last decade. Hence, the sentence imposed for the offence under Section 13(2) read with Section 13(1)(d) is modified to imprisonment till the rising of the court an to remit a fine of Rs.50,000/- (Rupees fifty thousand) and in default to undergo simple imprisonment for six months. No separate sentence is awarded for the offence under Section 7 of the P.C.Act. The appeal is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. NO. 204 OF 1999
JUDGMENT

12-9-2007